



Managed Access under the Chemical Weapons Convention

This pamphlet is the eleventh item in a series prepared by the On-Site Inspection Agency on the potential security impacts of the Chemical Weapons Convention designed to increase ***Readiness Through Awareness*** of the U.S. defense community. Additional copies of this pamphlet and other cost-free materials about the CWC, as well as many other arms control treaties, are also available from the On-Site Inspection Agency or through your Defense Investigative Service Industrial Security Representative.

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INTRODUCTION

Whether you are a facility security officer, program or facility manager, or responsible for an entire site, you should know how the Chemical Weapons Convention (CWC) could affect you and your facility. Under the CWC, dozens of industrial facilities will be subject to systematic verification of their declared chemical processing, production, or consumption. Verification of these declared activities will occur through initial and follow-up systematic on-site inspections at the facility.

Even if you do not declare any chemical activities under the CWC, your facility could be the subject of a “challenge inspection” by an international inspection team sent to investigate an allegation of U.S. non-compliance with the Convention. Such a concern could also prompt a challenge inspection at a declared facility.

If a CWC inspection is conducted at your facility, you still will be responsible to protect national security, proprietary, and other sensitive information not related to chemical weapons. You must do this while granting inspectors sufficient access

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to your facility to assure them that it is not being used for purposes prohibited by the CWC. Managed access can help you achieve both goals.

Simply defined, managed access is the use of methods, other than granting full access, to demonstrate compliance with the CWC. The purpose of this pamphlet is to discuss managed access techniques and how their use can help you ensure confidential business and national security interests at your facility are not compromised during CWC inspection activities.

BACKGROUND

The CWC is an international arms control agreement, with over 160 signatory nations, to prohibit the research, development, production, stockpiling, use and transfer of chemical weapons (CW). Its verification regime includes initial declarations and other reporting requirements along with initial, systematic and challenge on-site inspections. The goal of the CWC's verification provisions is to ensure confidence in compliance and deter chemical weapons activities among the Convention's many signatories. The

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purpose of chemical declarations and periodic reporting is to allow monitoring of the production and utilization of chemicals which can be easily diverted for chemical warfare purposes.

These chemicals are grouped into three “schedules” based on their previous use or potential use in chemical weapons. Schedule 1 chemicals comprise actual chemical weapon agents and a few other chemicals, called “precursors,” used to make chemical weapons. They are, for the most part, banned under the CWC and have no large-scale commercial use. Schedule 2 chemicals include several toxic chemicals and many precursor chemicals. Chemicals listed in Schedule 3, as well as some Schedule 2 chemicals, are also known as “dual-use” chemicals because, while they are also precursors, they are produced in large quantities for many legitimate commercial purposes.

The CWC also monitors the production of certain levels of other unscheduled chemicals called “discrete organic chemicals,” to include chemicals containing phosphorus, sulfur or fluorine. These are commonly referred to as “PSF” chemicals.



To accomplish this formidable task, the Convention's signatories negotiated a very comprehensive verification regime, which includes a number of intrusive on-site inspections.

INSPECTION REGIME

Initial and Systematic Inspections

All facilities in the United States which produce or consume scheduled chemicals at certain levels or thresholds are obligated to report these activities under the CWC. Any facilities that meet specified production or consumption thresholds found in the CWC will be “declared” by the U.S. soon after the CWC's entry into force and become subject to routine inspections. These will consist of the initial inspection and periodic follow-up inspections, called systematic inspections, for Schedule 1 and 2 activities, as well as systematic inspections for Schedule 3 and non-scheduled discrete organic chemical producers. The purpose of these inspections is to verify, through on-site inspection, the chemical activities declared. The inspections will be carried out by international teams of inspectors employed by the implementing body for the CWC—the Organization for the

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Prohibition of Chemical Weapons (OPCW) located in The Hague, Netherlands.

Concerns about compliance with the Convention, including those not resolved during routine inspections, may be addressed through challenge inspections. A challenge inspection may be requested by any CWC state party at *any* facility that is believed to be conducting prohibited CW activities. If the Executive Council of the OPCW does not consider the request to be frivolous, the Director General will issue to the inspected state a challenge inspection notification and inspection mandate. Soon after that, the Director will also send an international inspection team to the location to gather facts related to the alleged compliance concern—essentially that a facility is producing, storing, diverting, not declaring, or exporting CW agents or CW-related equipment or munitions. State parties of the CWC do not have the right to refuse a challenge inspection.

Challenge Inspections

The inspection regime of the CWC provides specific rights and obligations to both the inspection team and the inspected party. Consequently, all CWC inspections exhibit certain standard



features that you should anticipate, and when appropriate, consider in preparing to protect sensitive information. These features apply, to one degree or another, to all types of CWC inspections.

Inspection Features

Standard features may include the use of an inspection mandate, inspection plan, pre-approved equipment, inspector access (to buildings and records), personnel interviews, sampling, photography, perimeter negotiations and exit monitoring activities. Achieving a satisfactory inspection outcome requires skillful accommodation of these features, as well as managed access, throughout the inspection duration. A satisfactory outcome basically is one that provides sufficient access to the inspection team to clarify a concern or demonstrate compliance with the Convention while still protecting sensitive information and areas of the facility.

RIGHTS UNDER THE CWC

The Convention gives OPCW inspectors the right to conduct inspection activities necessary to fulfill their inspection mandate. However, the CWC charges inspectors with the

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obligation to conduct all inspections in the least intrusive manner possible commensurate with the timely completion of their mandate. Hence, they should be sensitive to the impact of their activities on plant or facility operations.

Nevertheless, the U.S. is obligated to grant sufficient access to inspection teams to demonstrate that nothing prohibited is occurring. Whenever less than full access is provided, the U.S., and thus the facility, incur the obligation to provide alternative means to clarify the concern or demonstrate compliance.

***Inspection
Team***

The CWC also provides inspected facilities the capability to protect sensitive or classified information and activities. For declared Schedule 1 and 2 sites, a draft facility agreement will be negotiated during the initial inspection to establish inspection procedures for subsequent systematic inspections. These procedures, if carefully negotiated, can provide “built-in” protection for facility security concerns. However, in instances where there is no draft facility agreement—initial inspections, systematic inspections of Schedule 3 and discrete organic chemical producers, and challenge inspections—other measures must be used to curtail unwanted disclosures of information.

***Inspected
Facility***

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The CWC gives the inspected party the right to take measures to protect national security and sensitive installations, and the right to prevent the disclosure of confidential information and data not related to chemical weapons. These measures are addressed in the Convention as managed access. The effective use of managed access balances the rights of the inspection team with those of the U.S. Government and the facility to protect sensitive information and installations at the facility.

***Inspection
Mandate***

Each CWC inspection team will have an inspection mandate—instructions issued by the Director-General to the inspection team for the conduct of a particular inspection. This mandate may or may not be provided to the inspected party during initial and systematic inspections, but presentation is mandatory for challenge inspections. For declared site inspections, the mandate will direct the inspection team efforts to the verification of declared chemical activities of the site. For a challenge inspection, the mandate is essentially a set of instructions for the inspection team to use in investigating a stated compliance concern. The mandate for a challenge inspection must be presented upon arrival of the inspection team at the U.S. point of entry; the content

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is not negotiable. However, it can be referenced by both sides during all access-related negotiations throughout the inspection to guide and focus inspection activities.

Inspector access is negotiated between the U.S. Government and the inspection team for all CWC inspections. For systematic inspections, access is negotiated and documented in the facility agreement. Facility agreements will be negotiated for each Schedule 1 & 2 declared site by the U.S. Government and the OPCW. These agreements will detail the extent and nature of access to be granted to inspection teams while conducting their activities. Facility personnel will be asked to assist U.S. Government representatives in negotiating access issues during the initial inspection; the outcome will be very important because it will set the precedent for subsequent systematic inspection activities at the facility.

Declared sites at which there are only Schedule 3 or discrete organic chemical activities occurring do not require facility agreements, but they may be developed if requested by the inspected facility. In cases where facility agreements do not exist, and for challenge inspections, access

Access Negotiations



will be negotiated based upon the concept of managed access. Access during challenge inspections of facilities with facility agreements will be in accordance with those agreements. Access beyond that granted by the facility agreement shall be in accordance with managed access procedures. These negotiations will also be important because they too determine the amount of access to be granted to specific areas of the facility, as well as the nature of inspection activities in these areas.

There are numerous managed access measures that can be applied by the inspected party during access negotiations to protect sensitive installations and information. The specific measure, or combination of measures, will vary according to the inspection situation. In some cases, use of managed access measures may not be necessary at all.

MANAGED ACCESS

The Convention requires that whenever less than full access is provided to the inspectors, every reasonable effort must be made to demonstrate that the object, building, structure, container or vehicle

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to which access is limited is not being used for purposes prohibited by the Convention. Nevertheless, the CWC also provides specific managed access measures that can be used by the facility to protect sensitive information not related to chemical weapons. The measures are listed below and described briefly in the paragraphs that follow:

- Negotiation of the inspection site perimeter
- Modifications to the inspection plan
- Removal of sensitive papers
- Shrouding of sensitive displays or equipment
- Logging off of computer systems
- Restriction of sample analyses to presence or absence of scheduled chemicals
- Use of random selective access
- Use of exceptional access

During a challenge inspection, the OPCW will provide a requested inspection perimeter for the site to be inspected. The U.S. may negotiate modifications to the perimeter to protect sensitive information. For example, suppose there is a building which houses a proprietary process located outside the perimeter, but within the 50 meter band. The CWC does not allow the

Perimeter Negotiations

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inspected party to restrict environmental sampling within the 50 meter band immediately outside the inspection perimeter. But, the Convention does permit restriction of sampling to the presence or absence of a scheduled chemical anywhere inside the inspection perimeter. Using managed access, the facility can ask the U.S. to negotiate a larger inspection perimeter, which captures the sensitive building, and thus allow the facility to restrict any sampling near the building to protect the proprietary process.

The CWC also permits the inspected party to designate the perimeter entry and exit points used for access during the inspection. This managed access measure is useful because the facility may prefer to have the inspectors enter and exit at the same point to further limit their observation of sensitive areas not related to chemical weapons.

***Inspection
Plan
Modifications***

For systematic inspections, the facility agreement for a declared site will contain the inspection plan for subsequent inspections at that site. All requirements and procedures necessary to protect sensitive activities or accommodate operations should be negotiated into the draft agreement during the initial

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inspection. Consequently, further negotiations will not be required to implement it.

During a challenge inspection, the inspection team will present a proposed inspection plan that typically lists the areas or buildings the team would like to inspect; the number and assignment of any inspection team subgroups; and, the sequence of inspection activities. Upon review of this plan, and after consultation with the facility's managers, the U.S. may suggest modifications to protect sensitive equipment or areas not related to chemical weapons.

For example, suppose there is a sensitive operation or proprietary process located at your facility. You may not want to allow an inspection team to observe the process or operation. Using information provided by facility managers, the U.S. could suggest modifying the inspection plan to grant the inspection team access to the building of concern *after* the sensitive operations have ceased for the day.

During a challenge inspection, the U.S. can use the inspection plan and the inspection mandate to manage inspector access. In this example, assume the concern relates to storage of chemical



weapons or CW munitions. If so, U.S. representatives could consult with facility managers and suggest a modification to the proposed inspection plan which focuses the inspection activities toward areas where weapons may be stored and away from buildings not relevant to the mandate—in which proprietary or otherwise sensitive processes might be located.

Both the U.S. and the inspection team may propose modifications to the inspection plan at any time during the inspection process. For example, based on information obtained during the inspection, the inspection team could request a modification to add new areas or buildings within the perimeter to the plan. In this case, the U.S. and facility representatives would again consider the proposed plan to review timing of the inspection team or subgroup, specific access requirements, etc., and negotiate modifications which would accommodate the team's request, to the maximum extent possible, while protecting any sensitivities.

***Removing
Sensitive
Papers***

The CWC allows the facility to remove and store sensitive papers *not* related to the compliance concern from the area(s) to be inspected. Although inspectors

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cannot open file cabinets or other storage containers, this measure ensures that inadvertent access to non-related documents cannot occur.

However, during initial and systematic inspections, inspectors must be provided access to relevant facility records to provide assurances that there have been no diversion of the declared chemical and that production has been consistent with the site's declarations. Also, during a challenge inspection, inspectors can request to review documents that are directly relevant to their inspection mandate or compliance concern.

Shrouding can be an effective managed access technique to permit the inspection team inside a building or area where sensitive equipment or other items are located. Shrouds can be made of virtually any material so as to conceal sensitive information that is not related to the compliance concern.

Shrouding

Shrouds may also be used to cover data indicating devices or displays in sensitive areas of your facility. You may, for example, cover an entire item to obscure its shape, or cover only a sensitive part such as a gauge or other indicating device.



Recall that the U.S. must demonstrate that all items within the inspection area, including shrouded items, are not used for purposes prohibited by the CWC. Consequently, the facility will want to construct shrouds that can be partially removed to demonstrate compliance with the CWC, while still protecting the item's sensitivity. One caution about over shrouding—it can be costly and may create a compliance concern or provoke unwanted attention or interest toward a particular area, item, or process.

Logging Off Computer Systems

Arguably, the most economical and effective way to protect sensitive information during any CWC inspection may be simply to turn off the affected system. While shutting down an entire system may not always be practical, the Convention specifically allows the inspected party to log off of computer systems and turn off data indicating devices, e.g., monitors, gauges or other equipment that indicates the status or level of an automated operation or activity that is occurring. This can be as simple as turning off a computer monitor or having employees temporarily log off computer systems when inspectors are present.

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During a challenge inspection, the inspection team has the right to request samples and to analyze the samples for evidence of scheduled chemicals. But under managed access, the inspected party has the right to restrict sampling and analysis within the inspection perimeter. For example, the U.S. may limit sampling to detection of a specific schedule 1, 2, or 3 chemical, their degradation products, or a discrete organic compound that is identified in advance by the inspection team. This measure is useful to the facility because, by analyzing only for a specific chemical, inspectors cannot gain information about proprietary chemicals or processes that may be present in the facility.

***Sampling for
Presence or
Absence***

For other CWC inspections, the inspection team may request samples and analyze them on-site to check only for the presence of undeclared scheduled chemicals at the facility.

Random selective access may be used during CWC systematic inspections of facilities which do not have an approved facility agreement and during challenge inspections at all non-declared locations. It is a technique in which inspectors will be requested to select only a certain number or percentage of areas, buildings

***Random
Selective
Access***

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or items for inspection. Such areas may include portions of the inspection site, specific buildings, or individual rooms or areas inside buildings. This technique allows the U.S. to limit the amount of exposure to areas not related to chemical weapons by allowing only a portion of the site to be examined.

This technique also applies to challenge inspections during perimeter exit monitoring. In this case, the inspected party may use random selective access to limit exposure of the contents of inspectable vehicles exiting the site. For example, if the team requests to take samples from a truck carrying multiple chemical containers, and the containers are similar, the U.S. may negotiate with the inspectors to select a specific number or percentage of the containers for sample analysis. Further, the U.S. may restrict the analysis to the presence or absence of specific chemicals as discussed earlier.

Exceptional Access

This measure, like all others, must also be negotiated with the inspection team. As the name implies, it should be reserved for truly exceptional circumstances in which other managed access measures cannot be applied. The CWC provides this technique to enable the inspected party to limit access to certain parts of the

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inspectable area to individual inspectors, rather than allowing the full team to enter—such as in a sensitive building or room with no association to chemical weapons.

There are other useful techniques not prohibited by the CWC, in addition to those specifically designated for managed access by the Convention, to protect sensitive information and areas. Route planning, for example, can be used to pre-plan the inspection team's route both to and through buildings inside the inspection perimeter. The inspected facility can also request that all personnel stay between marked safety lanes or within designated safety areas. Then, if the inspection team requests to go beyond marked lanes, managed access measures described earlier can be applied.

Other Techniques

Another proven technique is to permit inspectors to view sensitive areas only from doorways or through windows, or to restrict access to certain sensitive areas only during specified times.

More drastic measures could include dismissing large segments of the work force to limit inspector access to employees during the inspection, as well as physically removing sensitive



equipment or national security information and material not related to chemical weapons from the site prior to the inspectors' arrival.

THE DECISION TO MANAGE ACCESS

Although the CWC gives the inspected party, and thus the facility, the right to protect national security interests, as well as sensitive equipment and areas not related to chemical weapons, use of managed access may not always be necessary. In some cases, an international inspection team simply may not pose a security threat to either national security or a proprietary information. In those cases, only minimal preparation or assistance would likely be required to facilitate an inspection.

Regardless of the level of assistance provided to a facility by U.S. representatives, the facility or program manager or commander is not relieved of the responsibility to protect national security and proprietary information during any CWC inspection. The Government will provide trained

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personnel with arms control inspection and escort experience, as well as security countermeasures expertise, to help the facility manager determine how best to demonstrate that nothing prohibited is occurring and to preclude unwanted disclosures of sensitive information.

The U.S. representatives must also consider any existing inspection precedents that may apply, as well as not setting a precedent that could be unacceptable to another U.S. facility during a future inspection. Consequently, the decision to use, or not to use, managed access measures is normally made on-site by involved facility managers in coordination with U.S. representatives. However, there could be a situation in which access issues cannot be resolved during negotiations between the inspection team and U.S. representatives and facility managers.

If this happens, the issue may be raised by site or facility managers, through their lead agency, and simultaneously by the national escort, to a higher level of the U.S. Government.

The Government, cognizant of facility interests and after consultation with site or facility managers, may in exceptional



cases that are in the national interest, overrule the facility's desires. While the U.S. Government has the right to make final decisions on inspection team access, it will always try to protect the security and proprietary interests of the inspected facility.

CONCLUSION

The verification provisions, and particularly the on-site inspection regime, of the Chemical Weapons Convention could impact your facility. Whether the OPCW sends an international team to your facility to conduct a systematic verification inspection or to investigate a compliance concern, the Convention provides specific rights to help you. Awareness and understanding of managed access measures, as well as techniques for their application, can improve your ability to respond to security challenges during Chemical Weapons Convention inspection activities.

If you desire additional information about managed access and the CWC, OSIA has a video presentation titled *Managed Access under the CWC*, as well as other information about arms control

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agreements and related security countermeasures. Contact the On-Site Inspection Agency's Security Office and ask for the Industry Outreach Program Manager at 1-800-419-2899 or your local DIS Industrial Security Representative.



Notes

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